

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY**

Caption in Compliance with D.N.J. LBR 9004-1(b)

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In re:

BED BATH & BEYOND INC., et al.¹,
Debtors.

Chapter 11

Case No.: 23-13359 (VFP)
(Jointly Administered)

**LIMITED OBJECTION BY DADELAND STATION ASSOCIATES, LTD.
TO POTENTIAL ASSUMPTION AND ASSIGNMENT OF
UNEXPIRED LEASE AND RESERVATION OF RIGHTS**

Dadeland Station Associates, Ltd. (“Dadeland Station”), by and through its undersigned counsel, and in accordance with the *Notice to Contract Parties to Potentially Assumed Executory*

¹ The last four digits of Debtor Bed Bath & Beyond Inc.’s tax identification number are 0488. A complete list of the Debtors in these Chapter 11 Cases and each such Debtor’s tax identification number may be obtained on the website of the Debtors’ proposed claims and noticing agent at <https://restructuring.ra.kroll.com/bbby>. The location of Debtor Bed Bath & Beyond Inc.’s principal place of business and the Debtors’ service address in these Chapter 11 Cases is 650 Liberty Avenue, Union, New Jersey 07083.

Contracts and Unexpired Leases [Docket No. 714] (“Notice”) and the *Order (I) Establishing Procedures to Sell Certain Leases, (II) Approving the Sale of Certain Leases, and (III) Granting Related Relief* [Docket No. 422] (“Lease Sale Procedures Order”) submits this limited objection to assumption and assignment of the Dadeland Station Lease (as hereinafter defined) and, in support hereof, states as follows:

Background

1. On April 23, 2023 (“Petition Date”), each of the above-captioned debtors (“Debtors”) filed voluntary petitions for relief under chapter 11 of Title 11 of the United States Code (“Bankruptcy Code”).
2. On June 13, 2023, the Debtors filed the Notice, which states that, “pursuant to the Bidding Procedures and the terms of any Successful Bid, the Debtors **may** assume and assign to the Successful Bidder the contract agreement listed on Exhibit A to which you are a counterparty, upon approval of the Sale Transaction.” Notice, p. 2 (emphasis in original).
3. Exhibit A to the Notice lists at item number 598 that certain Lease Agreement between Dadeland Station, as lessor/counterparty and debtor Bed Bath & Beyond, Inc. as lessee for the premises located at 8380 South Dixie Highway in Miami, Florida (“Premises”). This entry corresponds to that certain Lease by and between Dadeland Station and Bed Bath & Beyond of Dadeland Station, Inc. dated as of October 31, 1994, as such Lease was subsequently amended and assigned, including, without limitation, by (i) that certain First Amendment to Lease, dated as of September 23, 1995, (ii) that certain Assignment and Assumption Agreement and Release, by and among Dadeland Station, Bed Bath & Beyond of Dadeland Station, Inc., and Bed Bath & Beyond Inc., and (iii) that certain Second Lease Modification by and between Dadeland Station and Bed

Bath & Beyond Inc. dated as of May 28, 2021. A copy of the Lease, as amended, is attached as **Composite Exhibit A** (the “Dadeland Station Lease”). The Notice further states that the cure cost associated with potential assumption and of the Lease is \$185,154.56.

4. Further, on May 22, 2023, the Court entered the Order (*I*) *Establishing Procedures to Sell Certain Leases, (II) Approving the Sale of Certain Leases, and (III) Granting Related Relief* [D.I. 422] (“Lease Sale Procedures Order”). The Lease Sale Procedures Order, among other things, approves additional sale procedures related to the Debtor’s potential sale of leases, provides procedures for the potential assumption and assignment of unexpired leases, and permits landlords to submit bids in connection with their specific leases, including credit bids of their undisputed cure amounts.

Limited Objection

5. Dadeland Station asserts that the correct cure amount for the Lease, as of June 14, 2023, is \$245,054.40, including approximately \$8,500 in attorneys fees (“Correct Cure Amount”), which amount includes, among other amounts due under the terms of the Lease, rent, insurance, CAM and similar reconciliation charges, real estate taxes due as of the Petition Date under the Lease as well as a post-petition backflow repair charge of \$1,263.16 for which Bed Bath & Beyond, Inc. is responsible.

6. If the Lease is to be assumed or assumed and assigned, the Debtors or the assignee must be required to pay Dadeland Station the Correct Cure Amount in accordance with Section 365(b) of the Bankruptcy Code, together with any other amounts that may accrue or be incurred between June 14, 2023 and the date that the Lease is actually assumed or assumed and assigned.

7. In addition to cure costs, Dadeland Station is entitled to adequate assurance of future performance by any assignee under Section 365(f)(2)(B) of the Bankruptcy Code. Further, because the Lease is a lease of real property in a shopping center, the provisions of Section 365(b)(3) must be satisfied with respect to any proposed assumption or assignment of the Lease and Dadeland Station must be provided with adequate assurance:

- (A) of the source of rent and other consideration due under such lease and in the case of an assignment, that the financial condition and operating performance of the proposed assignee and its guarantors, if any, shall be similar to the financial condition and operating performance of the debtor and its guarantors, if any, as of the time the debtor became the lessee under the lease;
- (B) that any percentage rent due under such lease will not decline substantially;
- (C) that assumption or assignment of such lease is subject to all the provisions thereof, including (but not limited to) provisions such as radius, location, use or exclusivity provision and will not breach any such provision contained in any other lease, financing agreement or master agreement related to such shopping center; and
- (D) that assumption or assignment of such lease will not disrupt any tenant mix or balance in such shopping center.

11 U.S.C. § 365(b)(3).

8. To date, Dadeland Station has not received any information concerning prospective assignees for the Lease, much less information sufficient to establish adequate assurance of future performance by any such assignee. The limited information available to Dadeland Station indicates that neither the Successful Bidder in the Debtors' general sale process (Overstock.com)

nor Phase 1 of the sale process under the Lease Sale Procedures Order has yielded an asset purchase agreement or proposed bid for the Lease.

9. Dadeland Station submits that no assumption and assignment of the Lease may occur unless and until the Debtors provide Dadeland Station with adequate assurance information as required under Section 365(b). In addition, Dadeland Station objects to any proposed assumption and assignment that does not require the assignee to comply with all of the terms of the Lease, including but not limited to all usage requirements and restrictions related to the premises as required under Section 365(b)(3) of the Bankruptcy Code.

Reservation of Rights

10. Dadeland Station reserves the right to amend and/or supplement this objection and the Correct Cure Amount, including in connection with any proposed sale under the Lease Sale Procedures Order. This Limited Objection should also be treated as an objection to any sale, assumption or assignment proposed in connection the Lease Sale Procedures Order and all objections and reservations asserted herein apply with equal force to any proposed sale, assumption or assignment under the Lease Sale Procedures Order.

Conclusion

WHEREFORE, for all the foregoing reasons, Dadeland Station Associates, Ltd. respectfully requests that the Court sustain this limited objection by conditioning any assumption and assignment of the Lease on: (a) payment to Dadeland Station of the Correct Cure Amount plus any other amounts accruing or incurred until the date that the Lease is actually assumed or assigned; (b) provision of adequate assurance of future performance, including without limitation as required by section 365(b)(3) of the Bankruptcy Code in connection with a lease of

real estate in a shopping center, and (iii) granting such other and further relief as the Court may deem just and proper.

Dated: June 26, 2023
Morristown, New Jersey

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